

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Blau *et al.*

Serial No.: 10/727,088

Filed: December 2, 2003

For: MAN-RATED FIRE SUPPRESSION
SYSTEM

Confirmation No.: 6016

Examiner: D. Hwu

Group Art Unit: 3752

Attorney Docket No.: 2507-6010US
(22031-US-05)

VIA ELECTRONIC FILING
September 9, 2010

BRIEF IN REPLY TO EXAMINER'S ANSWER

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Board of Patent Appeals and Interferences

Sirs:

Appellants hereby submit this Brief in Reply (“Reply”) to the Examiner’s Answer (“Examiner’s Answer”) having a notification date of July 9, 2010. This Reply is submitted on or before two months from the mailing of the Examiner’s Answer.

APPELLANTS' REPLY TO THE EXAMINER'S ANSWER

Claims 1-5, 7-16, 18-67, 69-90, and 94-119 are pending in the application and stand rejected. The rejections of claims 1-5, 7-16, 18-67, 69-90, and 94-119 are being appealed.

Appellants note that the Examiner had “no comment” on the “Real Party in Interest,” “Status of Amendments after Final,” “Summary of Claimed Subject Matter,” “Grounds of Rejection to be Reviewed on Appeal,” and “Claims Appendix” sections of Appellants’ Appeal Brief filed on April 22, 2010 (“Appeal Brief”). Appellants presume that since the Examiner did not comment on these sections of the Appeal Brief, that the information provided by Appellants satisfies the requirements of 37 C.F.R. § 41.37.

As explained in detail on p. 15 of the Appeal Brief, the Examiner has failed to address or respond to rebuttal arguments set forth in Appellants’ previous responses. The Examiner’s Answer also failed to address or respond to specific rebuttal arguments. Since the Examiner has not responded to many of Appellants’ arguments, Appellants are unable to prepare appropriate responses thereto during prosecution of the instant application.

The arguments presented in the Appeal Brief are incorporated herein by reference in their entirety. In this Reply, Appellants present arguments in response to certain issues raised in the Examiner’s Answer. For consistency, Appellants have utilized the same headings and numbering as set forth in the Appeal Brief.

F. Claims 1-5, 7-14, 18, 22-25, 57-65, 69, 72-75, 77, 78, 96-106, And 115-119 Are Not Obvious In View Of Galbraith in view of Canterbury

1. Claims 1-5, 7-14, 18, 22-25, 96-100, and 115

Galbraith and Canterbury, alone or in combination, do not teach or suggest all the limitations of independent claim 1 because nothing in Galbraith or Canterbury teaches or suggests the limitation of “the at least one gas generant comprising a non-azide, non-azole, non-aminoguanidine nitrate, non-triaminoguanidine nitrate composition formulated to pyrotechnically produce no sodium chloride and an inert gas mixture comprising carbon dioxide at a concentration less than or equal to the Immediately Harmful to Life or Health concentration of carbon dioxide” for the reasons set forth on p. 18-24 of the Appeal Brief.

The Examiner has not provided a response to Appellants’ argument that Canterbury does not teach or suggest the recited gas concentration for the reasons set forth on p. 19-20 of the Appeal Brief. While Appellants have provided detailed reasons why the Examiner’s reliance on Tables II and III of Canterbury is improper, the Examiner has not provided any further explanation of his position or provided a rebuttal to Appellants’ arguments. The Examiner also has not provided any reasoning in support of the statement that “it would be obvious to one having ordinary skill in the art . . . that the level of carbon dioxide produced would be less than or equal to the Immediately Harmful to Life or Health concentration” as set forth on p. 20 of the Appeal Brief. Therefore, Appellants are unable to prepare any additional arguments in response to the Examiner’s position.

Galbraith and Canterbury also do not teach or suggest the limitation of “the fire suppression system configured to dispel, at an exit thereof, the inert gas mixture to provide a dispelled inert gas mixture into a space, the dispelled inert gas mixture comprising carbon dioxide in a concentration substantially equal to the concentration pyrotechnically produced by the at least one gas generant” for the reasons set forth on p. 21-24. The Examiner has not provided a response to Appellants’ argument that the gases exiting the apparatus of Galbraith include CO₂ that is not pyrotechnically produced by the solid propellant 14 and, therefore, Galbraith does not teach or suggest the above-mentioned limitation. Therefore, Appellants are unable to prepare an additional response to the Examiner’s position.

2. Claims 57-65, 69, 72-75, 77, 78, and 101-106

Galbraith and Canterbury, alone or in combination, do not teach or suggest all of the limitations of independent claim 57 because neither reference teaches or suggests the limitations of “igniting at least one non-azide, non-azole, non-aminoguanidine nitrate, non-triaminoguanidine nitrate gas generant to produce an inert gas mixture comprising carbon dioxide” and “dispersing the inert gas mixture into a space to extinguish a fire, the dispersed inert gas mixture comprising carbon dioxide in a concentration substantially equal to the concentration produced by ignition of the at least one gas generant such that the space comprises carbon dioxide at a concentration less than or equal to the Immediately Harmful to Life or Health concentration of carbon dioxide” for the reasons set forth on p. 24-25 of the Appeal Brief.

The Examiner has not provided a response to Appellants' argument that the applied references do not teach or suggest the method limitations of claim 57. Instead, the Examiner merely states that "[t]he device [of Galbraith] will carry out the methods of claims 57-61." Therefore, Appellants are unable to prepare an additional response to the Examiner's position.

4. Claim 117

Galbraith and Canterbury, alone or in combination, do not teach or suggest the limitation in independent claim 117 of "the fire suppression system configured to dispel, at an exit thereof, at least a portion of the inert gas mixture, the dispelled inert gas mixture comprising carbon dioxide in a concentration equal to the concentration pyrotechnically produced by the at least one non-azide, non-azole gas generant" for the reasons set forth on p. 27-28 of the Appeal Brief.

The Examiner has not provided a response to Appellants' argument that the gases exiting the apparatus of Galbraith include CO₂ that is not pyrotechnically produced by the solid propellant 14 and, therefore, Galbraith does not teach or suggest the above-mentioned limitation. Therefore, Appellants are unable to prepare an additional response to the Examiner's position.

I. Claims 19-21 and 76 are not obvious over Galbraith in view of Canterbury, and
further in view of Knowlton

1. Claims 19 and 76

The Examiner has not provided a response to Appellants' argument regarding the additional reasons for allowance of claims 19 and 76, as set forth on p. 36 of the Appeal Brief. Therefore, Appellants are unable to prepare an additional response to the Examiner's position.

2. Claim 20

The Examiner has not provided a response to Appellants' argument regarding the additional reasons for allowance of claim 20, as set forth on p. 37 of the Appeal Brief. Therefore, Appellants are unable to prepare an additional response to the Examiner's position.

3. Claim 21

The Examiner has not provided a response to Appellants' argument regarding the additional reasons for allowance of claim 21, as set forth on p. 38 of the Appeal Brief. Therefore, Appellants are unable to prepare an additional response to the Examiner's position.

M. Claims 50-52 and 76 are not obvious over Galbraith in view of Canterbury and Drakin, and further in view of Knowlton

2. Claim 51

The Examiner has not provided a response to Appellants' argument regarding the additional reasons for allowance of claim 51, as set forth on p. 55 of the Appeal Brief. Therefore, Appellants are unable to prepare an additional response to the Examiner's position.

3. Claim 52

The Examiner has not provided a response to Appellants' argument regarding the additional reasons for allowance of claim 52, as set forth on p. 56-57 of the Appeal Brief. Therefore, Appellants are unable to prepare an additional response to the Examiner's position.

CONCLUSION

Appellants respectfully request the reversal of the rejections of currently pending claims 1-5, 7-16, 18-67, 69-90, and 94-119 for the reasons set forth above and in the Appeal Brief.

Respectfully submitted,

A handwritten signature in cursive script that reads "Katherine A. Hamer".

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